



The Commonwealth of Massachusetts
EXECUTIVE OFFICE OF PUBLIC SAFETY AND SECURITY
STATE 911 DEPARTMENT

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September 9, 2020

VIA ELECTRONIC MAIL AND OVERNIGHT MAIL

Shonda D. Green, Department Secretary
Massachusetts Department of Telecommunications and Cable
1000 Washington Street, Suite 820
Boston, Massachusetts 02118-6500

RE: Petition of the State 911 Department for Approval of Fiscal Year 2020 Expenditures, and
Approval of Fiscal Year 2021 Development Grant Amount

Dear Ms. Green:

In connection with the above matter, and in accordance with the Department of Telecommunication and Cable's Order 20-1, the State 911 Department hereby provides the Executive Office of Technology Services and Security formal guidance regarding the use and the expenditure of Enhanced 911 Funds. Also enclosed, please find a Certificate of Service related to this submission.

Thank you for your attention to this matter.

Very truly yours,

Dennis J. Kirwan
Dennis J. Kirwan
General Counsel

Enclosures

**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND CABLE**

Petition of the State 911 Department for Approval of Fiscal Year)
2020 Expenditures and Approval of Fiscal Year 2021)
Development Grant Amount)

CERTIFICATE OF SERVICE

I hereby certify that, on behalf of the State 911 Department in the above- captioned proceeding, I forwarded a copy of the attached Guidance Document to those included on the Service List.

Respectfully submitted,

Dennis J. Kirwan
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Dated: September 9, 2020

OBJECTIVE

In accordance with the Department of Telecommunication and Cable's Order 20-1 (hereinafter D.T.C. 20-1) the State 911 Department hereby provides the Executive Office of Technology Services and Security (hereinafter EOTSS) formal guidance regarding the use and the expenditure of Enhanced 911 Funds.

INTRODUCTION

Pursuant to D.T.C. 20-1, the DTC has directed the State 911 Department to develop formal guidance regarding EOTSS's management of the Enhanced 911 Funds. The DTC order states that the State 911 Department's guidance should:

- provide clear direction as to what statewide radio infrastructure project expenditures are sufficiently related to 911 dispatch, and,
- be as specific as possible and include examples of appropriate and inappropriate use.

The DTC order further states that in the event the guidance directive simply instructs EOTSS to comply with a statute or DTC Order, the State 911 Department must supplement that instruction with an interpretative statement.

BACKGROUND

In 2018 and in response to a petition filed by the State 911 Department, the Department of Telecommunication and Cable (hereinafter DTC) issued Order 18-2 that in relevant part, authorized the State 911 Department to collect and leverage \$125M in rate payor assessments for the purpose of modernizing and improving the Commonwealth's public safety radio network.

In September of 2019 and in accordance with M.G.L. c. 7D, responsibility for the public safety radio project was transferred from the State 911 Department to the Executive Office of Technology Services and Security. The transfer of the Statewide Radio Infrastructure project resulted from a statutory change that placed authority for all Commonwealth "information technology", including public safety radio services, in the Secretary of the Executive Office of Technology Services and Security. Although the enactment of Chapter 7D effectively transferred responsibility for the public safety radio network from the State 911 Department to EOTSS, the statute did not have any material effect on the revenue for the project nor the financial fiduciary duties of the State 911 Department. The resulting bifurcation of operations and financial oversight led to the establishment of an ISA between EOTSS and the Executive Office of Public Safety and Security (EOPSS), which is acting on behalf of the State 911 Department.

The ISA transfers \$125M from the "Enhanced 911 Fund" and sets-forth a five-year budget that provides for structured disbursements using the Commonwealth's accounting system. Moreover, the ISA includes detailed narrative which defines the manner and purpose that transferred funds may be expended. This ISA serves as the foundational agreement that provides EOTSS the access it needs to the allocated funds while ensuring that the State 911 Department is provided the information and data it needs to fully and completely satisfy its fiduciary responsibility to the

Trust Fund. This ISA is a contract for services and embodies the terms and limitations associated with the use and management of the funds transferred to EOTSS for the Statewide Radio Infrastructure project. (A copy of the ISA between EOTSS and EOPSS as well as a supplementary amendment have been attached to this guidance document and are incorporated herein by reference.). The guidance below is not intended to supplement or modify the existing contractual terms but rather is intended to reiterate and further clarify the language in the ISA.

GENERAL GUIDANCE REGARDING THE USE AND EXPENDITURE OF “ENHANCED 911 TRUST FUNDS”

All expenditures made from the Enhanced 911 Trust Fund shall be made in accordance with State Finance Law (M.G.L. chapters 29 and 30) and the statutory provisions governing the operations of the State 911 Department (M.G.L. c. 6A, section 18B and 18H).

Actions and decisions regarding the expenditure of ISA funds must be made in full compliance with state finance law, specifically those provisions governing Interdepartmental Service Agreements and the purchase of commodities and services. 815 CMR 6.00 governs Interdepartmental Service Agreements (ISAs). According to the State Comptroller’s April 30, 2007 instructional memo, “Interdepartmental Service Agreements (ISAs) are non-chargeback business relationships between state departments that are evidenced by an Interdepartmental Service Agreement (ISA) Form. The Interdepartmental Service Agreement (ISA) is the “Contract” that documents the business agreement (joint venture) between two state departments within any branch of state government. A department must be recognized as a department in the State Accounting System (hereinafter referred to as “MMARS”) to transfer or receive funding under an ISA. The ISA must comply with funding language in any appropriation act (GAA, interim or supplemental) funding the ISA, as well as all applicable general and special state or federal laws, regulations, policies and procedures.”

EOTSS and EOPSS entered into an ISA on or about August 29, 2018 (that was later amended on or about March 18, 2020) facilitating the transfer of \$120,985,067.25 to EOTSS so it could modernize and upgrade the CoMIRS network for the State 911 Department. In accordance with the subject ISA, EOTSS is reminded that among other provisions, the following terms have been expressly agreed to:

- ISA funds shall be used by EOTSS to:
 - support contractor resources and staff augmentation,
 - support project management,
 - complete the network, including design, engineering, preparation, upgrade, installation, and equipment,
 - complete the radio sites, including design, engineering, preparation, upgrade, installation, and equipment,
 - complete the central switching, including design, engineering, preparation, upgrade, installation, and equipment,
 - purchase portable and mobile radios for “Operable Users” (as defined below at “Guidance for the Replacement or Upgrade of Subscriber Units Owned and Used by

- Operable Users.”),
- purchase dispatch console equipment, and,
- fund all other related services/equipment that will support the modernization, improvement and/or expansion of the Commonwealth of Massachusetts Interoperable Radio System (CoMIRS).

Regarding the procurement of commodities and services, EOTSS is instructed to fully comply with the Commonwealth’s procurement regulations (801 CMR 21.00 et seq.). These regulations are promulgated by the Commonwealth’s Operational Services Division (OSD). EOTSS procurement personnel must be familiar with OSD’s Policy Guidance Memo 19-01 and the OSD resource, “Conducting Best Value Procurement Handbook”. Because of the nature of this project, some procurements may fall directly within the jurisdiction of the Secretary of EOTSS pursuant to M.G.L. c. 7D section 3. In such an event, EOTSS shall exercise proper judgment consistent with law and the balance of this guidance document.

In accordance with M.G.L. c 6A section 18B and 18H, the State 911 Department is authorized to collect and expend funds from the Enhanced 911 Fund. Pursuant to law, the State 911 Department shall disburse funds from the Enhanced 911 Fund for, “...prudently-incurred expenses ... incurred by the state 911 department in administering and operating the enhanced 911 system in the commonwealth ” In the State 911 Department’s original petition to the DTC, dated April 10, 2018, it argued that, “Funding and deploying mission critical public safety communications systems in tandem with the Next Generation 911 system are a top priority of the Department. These radio infrastructure improvements will help assure the timely and appropriate response by first responders to emergency requests received and handled by PSAP’s throughout the Commonwealth. Moreover, the Department stated that, “The investment...will focus on deploying new digital infrastructure across the state, radio consoles at 9-1-1 call centers as needed, and new subscriber units for users of the network.”. After a full and fair hearing on the matter the DTC ruled that, “Because the CoMIRS network plays a critical role in the Commonwealth’s E911 system, enabling PSAPs to dispatch, transfer, and relay emergency 911 calls, the DTC finds that the FY2018 proposed expenditures related to CoMIRS Upgrade are, or will be, prudently incurred.”

Whereas the DTC ruled that “expenditures related” to the CoMIRS upgrade were proper, certain CoMIRS costs may be charged against the Enhanced 911 Trust Fund. As a matter of interpretative guidance, the State 911 Department advises EOTSS that expenditures from the Trust, whether for services or commodities, must be causally related to the resolution of the critical deficiencies that exist in the current radio network. Services and equipment purchased with ISA funds MUST be strategically linked to the:

- elimination and/or replacement of aging and unsupported components, including network components and subscriber units,
- improvement of radio quality and/or coverage,
- enhancement of interoperability,
- expansion of network capacity,
- enhancement of network reliability,

- enhancement of provisioning 911 services, and/or
- promoting regionalization where possible.

ISA funds may not be used for the purchase of any service or commodity that is not strategically linked to the modernization or upgrade of the CoMIRS network. Specifically, Enhanced 911 Funds may not be expended:

- on subscriber units that will be issued to any person who is not directly assigned to or, employed by an “Operable User”,
- on any equipment, regardless of type, that will be deployed primarily in any environment other than CoMIRS,
- on any service, regardless of type, that is deployed primarily in any environment other than CoMIRS, and/or
- with the design to supplant any EOTSS’s operational or capital funds.

GUIDANCE FOR THE MODERNIZATION OF THE COMIRS RADIO NETWORK

The DTC has agreed that if the Commonwealth is to operate a reliable, interoperable dispatch, transfer, or relay system the CoMIRS network must be upgraded from an analog system to a digital system. The State 911 Department advises EOTSS that expenditures from the Trust that are strategically linked to the upgrade and modernization of the network are appropriate. The State 911 Department has determined that the following categories of modernization are consistent with the DTC’s order:

- project management including both operational and financial management,
- design engineering, including channel planning,
- radio site preparation, including structural engineering and construction,
- purchase of radio site P-25 digital equipment, including, site controllers, towers, site shelters, antennas, emergency power systems,
- purchase of backhaul equipment,
- purchase of central switching equipment, including hardware, software, licenses, zone controllers, circuits, and the network “core”, and
- purchase of network management systems.

Regarding network expenditures the State 911 Department instructs EOTSS to:

- aggressively seek competitive pricing for the design, construction and deployment of the new network and all ancillary aspects thereof,
- ensure that any equipment purchased or upgraded with ISA funds becomes an asset of the Commonwealth and that EOTSS develop in conjunction with the Operable Users a sustainability plan for all future costs associated with maintenance and repair,
- ensure that all network equipment purchased with ISA funds is inventoried by EOTSS in a manner consistent with like assets,

- maintain and retain for not less than seven years a file that is comprised of the purchase orders, shipping documents/slips, invoices, records of inventory activities, any other documents that relate to the network upgrade,
- forward copies of all purchase order(s), packing slips(s), invoice(s) and attestations signed by an authorized signatory that relate to the network upgrade to the State 911 Department, and
- submit to examination, audit, and inspection by the State 911 Department and/or any other local, state, or federal agency that has appropriate jurisdictional authority.

GUIDANCE FOR THE REPLACEMENT OR UPGRADE OF SUBSCRIBER UNITS OWNED AND USED BY OPERABLE USERS

Whereas the DTC acknowledged that an upgraded network requires upgraded portable and mobile radios, EOTSS is authorized to purchase approximately 15,000 subscriber units for “Operable Users”. As described in the many documents entered into the record during the DTC hearings and as acknowledged by the respective DTC Orders, subscriber units are mobile and portable radios used by first responders assigned to an agency or department that is an “Operable User”. The State 911 Department insists that EOTSS limit the purchase of subscriber units to those departments and agencies that qualify as “Operable Users” and take every reasonable effort to ensure that the quantity purchased is consistent with then actual number of subscriber units required. Accordingly, the State 911 Department instructs EOTSS to:

- formally adopt a definition for “Operable User”, as a state, county or municipal public safety agency or department, including PSAPs who:
 - rely on CoMIRS for their daily and routine communication, and,
 - rely on CoMIRS to communicate with other agencies and jurisdictions in times of emergency, major events, and/or cross-jurisdictional matters and,
 - is specifically identified by the Secretary of the Executive Office of Technology Services and Security as an Operable User.
- aggressively seek competitive pricing for portable and mobile replacement radios,
- replace or upgrade only active service, non-compliant subscriber units that are owned by an “Operable User” and issued to, used by, or deployed in direct support of the Operable User’s mission,
- ensure that the quantity of subscriber units replaced or upgraded is rationally related to the actual need of each Operable User,
- ensure that all subscriber units replaced or upgraded prior to the activation of the new CoMIRS P-25 Phase 2 network are:
 - P-25 Phase 1 and Phase 2 compliant.
 - capable of functioning on the Commonwealth’s current legacy public safety radio network and,
 - capable of functioning on the Commonwealth’s future digital P-25 compliant interoperable public safety radio network,
- limit the replacement or upgrade of an active service, non-compliant subscriber unit to a one-time transaction. Non-compliant subscriber units that are replaced or upgraded with ISA funds shall not be eligible for subsequent replacement or upgrade with like funding,
- ensure that any subscriber unit purchased or upgraded with ISA funds becomes an asset of the Operable User and that all future costs associated with such subscriber unit, including but not

limited to maintenance, repair, modification or replacement become the sole responsibility of the Operable User,

- ensure that any subscriber unit purchased or upgraded with ISA funds is inventoried by the Operable User in a manner consistent with like assets,
- maintain and retain for not less than three years a subscriber unit purchase file that is comprised of purchase orders, shipping documents/slips, invoices, records of inventory activities, any other documents that relate to the subscriber unit replacement or upgrade,
- forward copies of all purchase order(s), packing slips(s), invoice(s) and attestations signed by an authorized signatory to the State 911 Department,
- submit to examination, audit, and inspection by the State 911 Department and/or any other local, state, or federal agency that has appropriate jurisdictional authority,
- ensure that Operable Users understand that they may replace and/or dispose of subscriber units purchased with ISA funds only if such equipment has reached the end of its useful life per the manufacturer's warranty or industry expected useful life, whichever is longer, and
- File quarterly and annual fiscal year reports with the State 911 Department identifying all financial expenditures and project activity for the reporting period as well as identifying projected activity and spending for the next period; such financial reports should be accompanied by instructive narrative.